

Nuclear Regulatory Commission

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who shall furnish a copy to the individual. The findings and recommendations must be fully supported by stated reasons.

[64 FR 15644, Apr. 1, 1999]

§ 10.33 Action by the Deputy Executive Director for Management Services.

(a) The Deputy Executive Director for Management Services, on the basis of the record accompanied by all findings and recommendations, shall make a final determination whether access authorization and/or employment clearance shall be granted, denied, or revoked, except when the provisions of § 10.28 (i), (j), or (l) have been used and the Deputy Executive Director for Management Services determination is adverse, the Commission shall make the final agency determination.

(b) In making the determination as to whether an access authorization and/or an employment clearance shall be granted, denied, or revoked, the Deputy Executive Director for Management Services or the Commission shall give due recognition to the favorable as well as the unfavorable information concerning the individual and shall take into account the value of the individual's services to the NRC's program and the consequences of denying or revoking access authorization and/or employment clearance.

(c) In the event of an adverse determination, the Deputy Executive Director for Management Services shall promptly notify the individual through the Director, Office of Administration, of his or her decision that an access authorization and/or an employment clearance is being denied or revoked and of his or her findings with respect to each allegation contained in the notification letter for transmittal to the individual.

(d) In the event of a favorable determination, the Deputy Executive Director for Management Services shall promptly notify the individual through the Director, Office of Administration.

[64 FR 15644, Apr. 1, 1999]

§ 10.34 Action by the Commission.

(a) Whenever, under the provisions of § 10.28(i), (j), or (l) an individual has not been afforded an opportunity to con-

front and cross-examine witnesses who have furnished information adverse to the individual and an adverse recommendation has been made by the Deputy Executive Director for Management Services, the Commission shall review the record and determine whether an access authorization and/or an employment clearance should be granted, denied, or revoked, based upon the record.

(b) When the Commission determines to deny or revoke access authorization and/or employment clearance, the individual shall promptly be notified through the Director, Office of Administration, of its decision that access authorization and/or employment clearance is being denied or revoked and of its findings and conclusions with respect to each allegation contained in the notification letter for transmittal to the individual.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Commission to deny or revoke access to Restricted Data or national security information if the security of the nation so requires. Such authority may not be delegated and may be exercised when the Commission determines that invocation of the procedures prescribed in this part is inconsistent with the national security. Such determination shall be conclusive.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15645, Apr. 1, 1999]

§ 10.35 Reconsideration of cases.

(a) Where, pursuant to the procedures set forth in §§ 10.20 through 10.34, the Deputy Executive Director for Management Services or the Commission has made a determination granting an access authorization and/or an employment clearance to an individual, the individual's eligibility for an access authorization and/or an employment clearance will be reconsidered only when subsequent to the time of that determination, new derogatory information has been received or the scope or sensitivity of the Restricted Data or National Security Information to which the individual has or will have access has significantly increased. All new derogatory information, whether

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resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

(b) Where, pursuant to these procedures, the Commission or Deputy Executive Director for Management Services has made a determination denying or revoking an access authorization and/or an employment clearance to an individual, the individual's eligibility for an access authorization and/or an employment clearance may be reconsidered when there is a bona fide offer of employment and/or a bona fide need for access to Restricted Data or National Security Information and either material and relevant new evidence is presented, which the individual and his or her representatives are without fault in failing to present before, or there is convincing evidence of reformation or rehabilitation. Requests for reconsideration must be submitted in writing to the Deputy Executive Director for Management Services through the Director, Office of Administration. Requests must be accompanied by an affidavit setting forth in detail the information referred to above. The Deputy Executive Director for Management Services shall cause the individual to be notified as to whether his or her eligibility for an access authorization and/or an employment clearance will be reconsidered and if so, the method by which a reconsideration will be accomplished.

(c) Where an access authorization and/or an employment clearance has been granted to an individual by the Director, Division of Facilities and Security, without recourse to the procedures set forth in §§10.20 through 10.34, the individual's eligibility for an access authorization and/or an employment clearance will be reconsidered only in a case where, subsequent to the granting of the access authorization and/or employment clearance, new derogatory information has been received or the scope or sensitivity of the Restricted Data or National Security Information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other

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sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

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Subpart D—Miscellaneous

§ 10.36 Terminations.

In the event the individual is no longer an applicant for access authorization and/or employment clearance or no longer requires such, the procedures of this part shall be terminated without a final determination as to the individual's eligibility for access authorization and/or employment clearance.

§ 10.37 Attorney representation.

In the event the individual is represented by an attorney or other representative, the individual shall file with the Director, Office of Administration, a document designating such attorney or representative and authorizing such attorney or representative to receive all correspondence, transcripts, and other documents pertaining to the proceeding under this part.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.38 Certifications.

Whenever information is made a part of the record under the exceptions authorized by §10.28 (i), (j), or (l), the record shall contain certificates evidencing that the required determinations have been made.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

GENERAL PROVISIONS

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- 11.3 Scope.
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